

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Office of General Counsel

June 21, 2004

Mr. Thomas Mulroy, Esq.
Attorney for Peoples Gas Light and Coke Company
McGuireWoods LLP
77 West Wacker Drive
Suite 4400
Chicago, IL 60601-1681

Re: ICC Docket No. 01-0707 -- Proposed Search for Electronic Documents in
Response to POL 16

Dear Mr. Mulroy:

We write to you in response to your letter dated May 27, 2004, which contains a written proposal to search for electronic documents in a manner other than what was requested in Staff Data Request POL 16. In the aforementioned letter, you proposed that Peoples Gas would search for electronic documents (1) that were maintained by certain employees who are identified on pages 4 and 5 of the letter and (2) that contain one or more of the keywords listed on page 3 of the letter. In addition, the letter states that these documents would be produced if Staff stipulates and agrees to three conditions set forth on page 6 of the letter, which relate to the confidential and privileged nature of the information to be produced.

Staff has reviewed your proposal and hereby requests that both the Proposed Search Terms list and the Proposed List of Identified Employees be modified. See Attachments A and B. For your convenience, the terms and people that Staff propose be added to the lists are highlighted.

In the May 24th letter you list three conditions for producing the material. Staff does not enter into proprietary agreements regarding utility records, given the statutory provisions governing Commission viewing of utility records. Further, Staff has not seen the documents for which you seek confidential treatment. Therefore we cannot agree that all of them are proprietary, privileged, confidential or would cause competitive harm. Nonetheless, in reference to your first condition, Staff will treat the electronic documents produced through the agreed upon search in accordance with Sections 4-404, 5-108 and 10-107 of the

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Public Utilities Act, 220 ILCS 5/ 4-404, 5-108 and 10-107.

Your second condition seeks to have all of these electronic documents be deemed exempt from release under the Freedom of Information Act ("FOIA"), 5 ILCS 140/7. Without first seeing the documents, Staff is doubtful that every part of every electronic document would meet the requirements for being exempt from release. 5 ILCS 140/8. However, because Staff has agreed to confidential treatment, the electronic documents are exempt from release under Subsection 7(y) of FOIA, 5 ILCS 140/ 7(y), at the very least.

Since you have referenced FOIA in your letter, FOIA places a large burden on the Commission when documents in its possession are given exempt treatment. 5 ILCS 140/ 3(c) and 8-11. Similar burdens are placed on the Commission when such materials are subject to subpoena. If a FOIA request or a subpoena is received by the Commission, which requests production of the electronic materials at issue in this proposal, Staff would expect that Peoples Gas would participate actively within the processes of the agency and court, so that the right to access would not be unnecessarily limited.

The third condition that you request Staff agree to, states:

Due to the complexity, cost and time involved, Peoples Gas will be unable to screen the electronic data produced for privileged material. The Illinois Commerce Commission agrees that if any privileged information is produced, the production was inadvertent and shall not be considered a waiver of any privilege. Any such inadvertently produced data shall be returned to Peoples Gas and will remain confidential and shall not be shared with any other party, entity, or agency.

This third condition is going beyond discovery and into the use of the discovered electronic documents. If some of these documents are to be used in the proceeding, and your client seeks to maintain the confidential or privileged nature of those documents, a Protective Order must be requested of the Administrative Law Judge, pursuant to Subsection 200.430(c) of the Commission's Rules of Practice. Staff will not take responsibility for determining which documents provided by Peoples Gas qualify as a privileged communication. Illinois courts have found that the party seeking the privilege has the burden of claiming and showing which documents are entitled to protection as a privileged communication. See Cox v. Yellow Cab Co., 61 Ill. 2d 416, 419-20 (1975); Krupp v. Chicag Transit Authority, 8 Ill. 2d 37, 42 (1956). Therefore, it is Peoples Gas', and not Staff's, burden to designate and claim the documents that are entitled to protection as a privileged communication. If a privileged document, in your opinion, has been given to Staff, the process must include a ruling by the Administrative Law Judge on the privilege.

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In addition, the third condition states that your production of electronic documents is contingent upon the agreement by the Illinois Commerce Commission that “the production was inadvertent and shall not be considered a waiver of any privilege.” It must be noted that only the Staff Witnesses of the Commission assigned to these dockets participate in the dockets and are represented by counsel in the docket. While the actions taken by Staff Witnesses in a cause has a bearing on the treatment of documents as confidential, etc. for FOIA and other purposes, we do not have the authority to enter an agreement on behalf of the Illinois Commerce Commission. As far as Staff Witnesses are concerned, if a proprietary electronic document is inadvertently received, Staff Witnesses will not argue that the proprietariness of the document is thereby waived.

Please consider Staff’s modifications to the Proposed Search Terms list and the Proposed List of Identified Employees and our response to the conditions you have proposed. Should you have questions or concerns regarding this matter, please do not hesitate to contact us.

Yours sincerely,

/s/

Sean R. Brady
James E. Weging

Staff Counsel

cc: **VIA E-MAIL AND U.S. MAIL**

Ms. Mary Klyasheff and Messrs Mark J. McGuire, and William L. Kuhn of McGuireWoods LLP
Steve Knepler, Staff

Attachment A
Proposed Search Terms

Enovate	Monetization
enron	rfp supply
peoples mw	slow pay
peoples Midwest	Rolling thunder
peoples energy resources company	Trunkline
Perc	Nss
peoples energy production	asset optimization
Pep	indian summer
midstream	Ing blowout
bill morrow	turkey trot
value-at-risk report	michcon blowout
Aruba	spring fling
38 millennium special	Tomaski
38 special	Luce
hub blowout	Penman
manlove jumpstart	Delainey
tidal wave	Radous
Synthetic	Dss
revenue sharing	NGPL ITS
project manlove	storage optimization
transfer price	asset optimization
profit sharing	infield transfer
midwest energy hub	Two county rule

Attachment B
List of Identified Employees

Akkerman, Antje	Niemi, Frank
Allen, Tim	Norment, Jake
Ammerman, Mike	O'Connell, Kevin
Anderson, Neal	Owen, Thomas
Anderson, Dean	Patrick, Thomas
Ansari, Michelle	Pikofsky, Lynn
Blachut, Charlie	Pokorny, Judy
Bunda, Kathy	Puracchio, Thomas
Burgener, Paul	Quigley, William
Chiti, James	Reiger, George
Cittadine, Kay	
Cole, Curtis	
Compton, Anthony	
Connery, Thomas	
Davis, Tom	General Accounting
DeBortoli, Ann	Corporate Secretary Services
deLara, Raulando	Richman, Steve
DiVario, M.	
DiVito, Maria C.	Robinson-Maniece, Lorinda
Dobson, Richard	Rodrigue, Robin
Donofrio, Katherine	Rodriguez, Roy
Duffield, Todd	
Fiorella, Salvatore	Rogers, Desiree
Fox, Gerry	Gebhardt, Greg
Fuentes, Daryll	Rugen, Dave
Gebhardt, Mike	Ruschau, Doug
Gulik, Kathleen	Santor, Mary
Hall, Wayne	Sikora, Charles, Jr
Harrington, Robert	Sirora, Thomas C.
Hayes, Robert	Slechta, Jerome
Hengtgen, John	Small, Mike
Hermann, Timothy	Smith, Betty
Holler, Sonia	Smith, Tom
Horton, John	Stabile, John
Kallas, Linda	Syvertson, David
Kauffman, Peter H.	Siora, C.
Kirpatrick, Robert	Thomas, Jean
Kowalski, Bruce	Thomas, Lillian
Kronas, Ted	Thompson, Charles
Lawler, Dennis	Trotta, Robert
Lazzaro, David	Turner, Paul
Luebbers, James	

Attachment A

Malojkovich, Danny
Maka, Elizabeth
Marozas, Brian
Melchi, Martin
Mickus, Lee
Mixon, Mark
Morrow, William E.
Nance, Steven
Nardi, Thomas
Naughton, Kevin

Waltz, Dave
Wear, David
Westgate, Jim
White, Betty
Wiman, Jenny
Wirck, Jr., John
Zack, Tom

Zagorski, Donna M.